doubt that, at the date of the actual transfer of the goods, the bankrupt must have contemplated her bankruptcy, since she filed her petition three days later.

[46] [46] The law as to fraudulent transfers was considered at some length by Warrington L.J. in the case of *In re Cohen; Ex parte Trustee,* [1924] 2 Ch. 515, 536 in which he quoted Lord Esher M.R. in *New, Prance & Garrard's Trustee* v. *Hunting,* [1897] 2 Q.B. 19, 27:—

"The doctrine with regard to fraudulent preference is well known. The question whether there has been a fraudulent preference depends, not upon the mere fact that there has been a prefernce, but also on the state of mind of the person who made it. It must be shown, not only that he has preferred a creditor, but that he has fraudulently done so. It depends upon what was in his mind. Whether it is called 'intention,' or 'view,' or 'object' does not appear to me to matter much. The question is whether in fact he had the intention to prefer certain creditors."

At p. 537 the learned Lord Justice, after quoting another case stated:

"I think these passages in themselves establish that it is for the trustee to make out some case that the payment was with a view to preferring the creditor, and the mere fact that the payment results in prefernce is not enough."

In the present case, what I have to endeavour to do, is to decide from the evidence, what was the dominant motive which actuated the bankrupt to transfer the goods, and whether she can be said to have given the preference to the respondent "voluntarily."

She is a woman of little education, and cannot be expected to know the niceties of the law relating to bankruptcy. Even if her action may appear to have been voluntary, it is capable of explanation, as for instance where the preference was caused by pressure, fear or the like.

In *Buckley's* case, [1899] 2 Ch. 725 it was held that a moral obligation towards a particular creditor was not sufficient to justify a preference in fact, but here, although the letter of the 15th January, 1934, which the bankrupt had given may have been valueless in law, I think there can be no doubt that she was under the impression that she had given the respondent some sort of security for the loan.

In delivering the goods, the bankrupt was under the same apprehensions of legal process, as if the respondent had actually threatened her. She knew that by the letter she had authorised the respondent to remove goods to the value of $7,500 (if he so desired) "without let or hindrance." She then received the notice of 12th April, 1935, written in English, and which necessarily had to be translated to her (possibly with embellishments) containing the words "otherwise action will be taken against you to take possession of the goods from your premises to recover the above money and any subsequent expenses that may be incurred therewith."

In my view, to an ignorant woman, this was clearly a threat of legal proceedings, and the subsequent delivery of the goods was not a voluntary act, but an act under pressure, however groundless the threat of legal proceedings may have been.

In this case, I consider, [as was found in the case of *Sime, Darby & Co., Ltd.* v. *Official Assignee, supra*] the dominant motive actuating the debtor was that in making the transfer, she was only doing what she felt herself bound or compelled to do.

For this reason the motion must be dismissed with costs.

Motion dismissed.

M. KANNABHIRAN v. R. M. MUTHIAH PILLAY

[A.C.J. (Thomas C.J.) December 7, 1935]

[Pahang Collector's Civil Appeal No. 2 of 1935]

The Land Code, 1926, s.142 — Powers of Collector.

In determining the amount due under a charge under section 142 of the Land Code, 1926, the Collector has no power to determine extraneous matters, such as a question of the right to recover damages for negligence.

If the Collector is satisfied, after hearing the reasons advanced by the chargor, that cause has been shown he should stay further hearing of the application until such reasonable time as will allow the chargor to take any action he pleases with regard to such extraneous matters.

Storr for the appellant.

Tan Teow Bok and *Cumarasami* for the respondent.

Cur. Adv. Vult.

Thomas C.J.: This is an appeal from a decision of the Collector of Land Revenue, Raub. The appellant is the registered transferee of a charge of certain lands in the E.M.R. Sementan Ulu. The charge was in the form contained in Schedule XXIV(a) of the Land Code, 1926.

The terms of the charge not having been complied with, proceedings were commenced under the provisions contained in section 141 *et seq.* of the Land Code, 1926. Section 142 is as follows:—

"If after hearing the application the Collector is satisfied that default has been made in any particular as aforesaid, and if no cause be shown to his satisfaction, he shall by order in the Form in Schedule XXXII determine the amount due under the charge and order the sale of the land charged or of such portion thereof as he may tihnk fit, and thereupon the chargee shall deposit the duplicate memorandum of charge with the Collector."

[47] [47] At the hearing before the Collector the chargee admitted having collected certain rents arising from the property charged in accordance with an agreement entered into with the chargor when proceedings had been previously taken in 1930. The chargor disputed that the rents had been correctly accounted for, and asked for an adjournment to enable him to obtain his papers which were with his papers which were with his lawyer.

An adjournment was granted. At the adjourned hearing, seemingly no further evidence was taken. There would appear to have been arguments by advocates to the effect that the chargee had been guilty of negligence in collecting the rents, and that he should be made to account for all sums which might have been received, whether in fact received or not.

The Collector found that he chargee had not collected the rents with due diligence and allowed the full sum which might have been collected, and ordered that the land should be sold for the principal sum and interest accumulated up to the date of his order at 12 per cent. and thereafter at 8 per cent., less $1,740 being the full amount of the rent that the chargee should have collected.

In the grounds of his decision the Collector states that —

"On examination of the accounts I find a considerable lack of diligence in the collection of rent both as regards regularity of collection and in the amount collected."

It has been contended on this appeal that the Collector arrived at this decision without fully going into the evidence. This contention is, in my opinion, justified since no opportunity was given to cross-examine the chargor at the adjourned hearing.

But it would also seem that the Collector exceeded his duties. In section 142, which I have already set out, the Collector is authorised to determine if no cause be shown to his satisfaction. When a cause is shown to his satisfaction he should either, in a proper case, refuse to determine or postpone determination until the chargor has had an opportunity to give effect by suit or otherwise to the cause shown. There would not appear to be any power for the Collector on an application of this kind to determine extraneous matters, such as a question of the right to recover damages for negligence. I would suggest that the proper course in the present case would have been to have fully heard the reasons advanced by the chargor, and if satisfied that cause had been shown, to have stayed the further hearing of the application until such reasonable time as would allow the chargor to take such action as he might be advised.

The order of the Collector must be set aside, and the matter referred to him to be dealt with under section 142 of the Land Code. The appeal is allowed with costs.

Appeal allowed.

M. D. A. GOONATILLAKE v. PUBLIC PROSECUTOR

[A. Cr. J. (Mills J.) December 1, 1935]

[Johore Bahru Criminal Appeal No. 19 of 1935]

Rubber regulation — Construction — Meaning of "tappable" — False information in a return — Rubber Regulation Enactment, *ss.19(i)(c) and 21(i)(c).*

The expression "tappable rubber" in a form furnished by the Controller of Rubber under the Rubber Regulation Enactment to owners of medium holdings for the purpose of assessment of standard production means "rubber plants mature for tapping."

In a charge under section 21(i)(c) of the Enactment for wilfully furnishing false information, an offence is committed if the false information is wilfully furnished and it is immaterial whether that information is or is not wilfully false.

Faith (Assistant Controller of Rubber, Kukop) for the prosecution.

Das for the accused.

Appeal from the decision of the Magistrate at Pontian Kechil.

On the 18th June, 1934 M. D. K. Goonatillake submitted to the Assistant Controller of Rubber, Kukop, for the purpose of the assessment of his holding a return signed by himself of the acreage on his holding planted with rubber.

The Assistant Controller of Rubber accepted the accused's statement that the land comprised in Surat Semantara 409/26 and 410/26 contained 11 acres 1 rood and 11 poles of "tappable rubber" and the prosecution was confined to the alleged falsity of the information that there were forty acres of "tappable rubber" in Grant 8973, referred to in the evidence and in grounds of judgment of the learned Magistrate below as Lot 2621.

On the 6th October, 1935 Mr. J. E. Green, a Senior Rubber Inspector, visited the holding and found approximately 14 acres only of land planted with trees which he classed as "tappable rubber." He found that the remainder of the forty acres was partly planted with immature rubber and was partly blukar.

The case came on for hearing before the Magistrate at Pontian Kechil on the 9th and 16th October, 1935.

The accused was convicted and fined $250. He appealed from the conviction and sentence, and the following grounds of judgment were given.

Weiss (First Magistrate): This case turned on the construction of two separate terms — one in the section of the Enactment under which the accused was charged, while the other is employed by the Controller of Rubber in the administration of the Enactment.

[48] In the Form (Ex. "B"), which is the form furnished by the Controller to owners of medium holdings for the purpose of provisional assessment, the owner is required to declare, *inter alia,* the area of tappable rubber — on his holding. "Tappable rubber" is not defined in the Enactment, and I therefore construed these words to mean, — as intended by the controller to mean, and as having been understood by the appellant to mean, — such rubber as would be tapped in the course of ordinary planting operations. [48]

The appellant declared, and still claimed at the trial, that on lot No. 2621 forty acres were planted with tappable rubber. The evidence of Mr. Green, the Rubber Inspector, appeared to me to establish conclusively that only 14 acres were so planted in this area. Subsequent to the first day's hearing, however, the witness Mohamed bin Jamaludin, a licensed appraiser, visited the holding on behalf of the appellant and counted 3,929 trees which he classed as mature rubber trees. Apart from the suspicion which is naturally aroused by evidence obtained during the course of a trial I had no particular reason to doubt the truth of this statement, for what it was worth. It was argued, that as these trees were scattered over the whole of the forty acres, no matter how varied the distribution, there was an average of at least 90 trees per acre, and that to claim that forty acres were